

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<b>IN RE NAMENDA DIRECT PURCHASER ANTITRUST LITIGATION</b>  <b>THIS DOCUMENT RELATES TO: All Direct Purchaser Actions</b>	<b>Case No. 1:15-cv-07488-CM-RWL</b>
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**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFFS' MOTION *IN LIMINE* NO. 15: PRECLUDE FOREST  
FROM RELYING UPON PATENTS OTHER THAN THE '703 PATENT  
AS AFFECTING GENERIC NAMENDA IR**

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## **I. ARGUMENT**

The sole patent at issue in the Namenda Patent Litigation was United States Patent No. 5,061,703 (“the ‘703 Patent”). Litvin Decl. Ex. 39, PX-577, Forest’s Complaint in Namenda Patent Litigation; ECF 699-2, Amended Pretrial Order Ex. 2 (Forest’s Contentions) at 3. To ensure that Forest would not rely upon any other patent as allegedly affecting the market entry of generic Namenda IR products, Plaintiffs sought in their very first interrogatory to require Forest to identify any patents upon which it was relying. Interrogatory No. 1 requests that Forest “Identify each Asserted Claim of each Namenda Patent,” where “Namenda Patent” was defined as “the ‘703 Patent and any other patent You contend would have affected any Generic Namenda Competitor’s right, ability or willingness to market its Generic Namenda Product.” Litvin Decl. Ex. 7, Plaintiffs’ Amended First Set of Interrogatories at 3, 6.

The *sole* patent Forest identified in response to this interrogatory was the ‘703 Patent. Litvin Decl. Ex. 9, PX-1397, Second Supplemental Responses and Objections of Actavis PLC, Forest to the First Amended Set of Interrogatories Served by Direct Purchaser Class Plaintiffs at 10-12. Moreover, the only patent referenced in Forest’s factual contentions in the Pretrial Order is the ‘703 Patent. ECF No. 699-2 at 6-9.

Accordingly, Forest should be precluded from ambushing Plaintiffs at trial by relying upon any patent other than the ‘703 Patent as allegedly affecting the marketing of generic Namenda IR products.

Dated: May 24, 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2019, I electronically filed the above by CM/ECF system.

Respectfully submitted,

/s/ Dan Litvin

Dan Litvin